

OCT 23 2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
)
Tarbotton et al.) Art Unit: 2137
)
Application No. 10/028,651) Examiner: Pyzocha, Michael J.
)
Filed: 12/20/2001) Date: 10/23/2006
)
For: SYSTEM, METHOD AND)
COMPUTER PROGRAM PRODUCT)
FOR PRECLUDING WRITES TO)
CRITICAL FILES)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences**REPLY BRIEF (37 C.F.R. § 41.37)**

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer mailed on 08/23/2006.

Following is an issue-by-issue reply to the Examiner's Answer.

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Docket No.: NAIIP055/01.228.01

App. No: 10/028,651

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October 23, 2006

Issue # 1:

The Examiner has rejected Claims 1-7, 9-10, 12-20, 22-23, 25-28, and 30 under 35 U.S.C. 103(a) as being unpatentable over "Q222193- Description of the Windows 2000 Windows File Protection Feature" (hereinafter WFP), in view of Rickey et al. (U.S. Publication No. 2002/0166059).

Group #1: Claims 1-2, 4-7, 13-15, 17-20, and 26-27

With respect to the current grouping, and specifically appellant's claimed technique "wherein the factors are altered based on the monitoring of the requests to write to the files on the computer," the Examiner has responded to appellant's arguments, in the Office Action mailed 1/12/06, by stating that "when WFP is monitoring for modifications to files the write request is part of the change and therefore part of the monitoring." First, appellant respectfully asserts that what is claimed is "factors [that] are altered based on the monitoring of the requests" (emphasis added), and not merely monitoring write requests, as the Examiner argued. Appellant emphasizes that WFP teaches that the "Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified" and that a "second protection mechanism [is]...the System File Checker tool [that] scans all protected files to ensure they are not modified." Thus, WFP only discloses a situation where it is determined if a file has already been modified, and not altering factors "based on the monitoring of the requests" (emphasis added), as claimed by appellant. Furthermore, WFP discloses restoring a file to a correct Microsoft version, but not altering factors associated with the computer, in the manner claimed by appellant.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "[a]s described on page 4 of appellant's specification, 'the factors are selected from the group consisting of critical files, critical file locations, and trusted applications'" and that therefore "the critical files of WFP are the claimed factors." Further, the Examiner has argued that "since files are factors, as disclosed in appellant's specification, changing a modified file to a correct version is altering that factor." However, appellant respectfully points out that what is claimed is a technique "wherein the factors are altered based on the monitoring of the requests to write to the files on the computer" and the factors may include, but are not necessarily limited to "the group consisting of

critical files, critical file locations, and trusted applications,” as the Examiner’s contends. Thus, despite the Examiner’s arguments, WFP clearly fails to meet appellant’s claimed “factors [that] are altered based on the monitoring of the requests” (emphasis added), as claimed.

Further, in the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “WFP monitors a file system to determine when a file has been modified, and whenever a file is modified a write occurs in the system and with every write call exists a write request, therefore, WFP monitors write requests.” Appellant respectfully disagrees with the Examiner’s argument and asserts that the mere disclosure of notification when a file has been modified simply fails to even suggest that WFP monitors “requests to write to the files,” as claimed by appellant. Specifically, WFP discloses that “it is notified that a file in a protected folder is modified” (bottom of Page 1 - emphasis added). However, the mere disclosure by WFP of being notified when a file is modified simply fails to even suggest that “factors are altered based on the monitoring of the requests to write to the files on the computer” (emphasis added), as claimed by appellant. Clearly, WFP’s notification when a file is modified fails to meet appellant’s claimed “monitoring of the requests to write to the files,” in the manner as claimed by appellant.

Second, appellant respectfully disagrees with the Examiner’s argument that “each time a file [is] written (i.e. modified) a write request occurs” such that “the write request [which is] part of the change... [is] therefore part of the monitoring,” as noted in the Office Action mailed 1/12/06. Specifically, WFP only teaches that the “Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified” and that “[o]nce the notification is received, the Windows File Protection feature determines which file was changed” (emphasis added). Thus, in WFP, the monitoring is performed with respect to when an actual modification has already been made, and not to when a request to write to the files on the computer is made, in the manner claimed by appellant. To emphasize, appellant claims altering factors based on a request, and not merely a file modification that has already been made, as in WFP. As such, appellant’s claim language allows for the “writes to the files on the computer” to be prevented such that the modification is not made, in the manner claimed.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “when a modification to a file protected by WFP is made that places it in an incorrect version, it is

replaced with the correct version” and that “[t]his replacement is based on the determination that the file is an incorrect version, thereby preventing the incorrect version from being written.” Appellant respectfully disagrees with the Examiner’s argument, and asserts that WFP instead merely discloses that “it is notified that a file in a protected folder is modified” and that “if the file is protected, the Windows File Protection feature looks up the file signature in a catalog to determine if the new file is the correct Microsoft version” (bottom of Page 1 – emphasis added). Appellant asserts that WFP’s disclosure that the file is modified resulting in a new file which causes WFP to look up the file signature in a catalog to determine if it is the correct Microsoft version, contradicts the Examiner’s argument that the WFP’s “replacement ... prevent[s] the incorrect version from being written.” Again, appellant’s claim language allows for the “writes to the files on the computer” to be prevented, as claimed, such that the modification to the file is not made. Clearly, WFP’s disclosure of replacing the new file after it is modified fails to suggest preventing “writes to the files on the computer,” in the manner as claimed by appellant.

Further, appellant respectfully asserts that if WFP prevented writes to the file, as asserted by the Examiner, then the file would not need to be replaced since the file would be prevented from being modified to the incorrect version. Clearly, since WFP discloses that a modified file of an incorrect version is replaced with the correct version, WFP fails to meet appellant’s claimed preventing “writes to the files on the computer,” as claimed, and even *teaches away*. Still with respect to the present grouping, and specifically appellant’s claimed technique “wherein the factors are updated based on the requests,” the Examiner has responded to appellant’s arguments, as noted in the Office Action mailed 1/12/06, by stating that in WFP “when a file is changed to an incorrect version, WFP replaces the file with the correct version, which is both altering and updating.” Appellant respectfully asserts that WFP only teaches responding to the actual modifications of files, and not to “update[ing] based on the requests” (emphasis added), as claimed by appellant.

In the Examiner’s Answer mailed 08/23/2006, the Examiner has argued that “[a]gain, the file is the factor and when the incorrect version of a file is detected it is replaced with the correct version based on the detection, i.e. the file is updated to the correct version” and that “monitoring for modifications corresponds to monitoring write requests as discussed above.” Appellant respectfully disagrees with the Examiner’s arguments, and respectfully asserts that, in WFP, the

file is updated after being modified. Thus, the update is based on the modification, which clearly does not meet appellant's claimed "factors [that] are updated based on the requests" (emphasis added), as claimed by appellant, where the requests are "requests to write to the files on the computer," in the context as claimed by appellant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met, for the reasons noted above.

Group #2: Claim 28

With respect to the present grouping, the Examiner has relied upon pages 1-2 in WFP to make a prior art showing of appellant's claimed technique "wherein the at least one of critical files and critical file locations are looked up based on requests to write to the at least one of critical files and critical file locations on the computer."

Appellant respectfully asserts that pages 1-2 from WFP merely teach "cache[ing] all protected system files" in order to replace any modified protected files. However, restoring protected system files from a cache or installation media after they are modified clearly fails to even suggest a technique "wherein the at least one of critical files and critical file locations are looked up based on requests to write to the at least one of critical files and critical file locations on the computer" (emphasis added), as claimed by appellant.

In the Examiner's Answer mailed 08/23/2006, the Examiner has argued that "WFP disclose[s] that when a file is modified to an incorrect version, the correct version of that file is looked up and replaced with the correct version of the file from a cache as shown on the bottom of page 1 to the top of page 2 and is therefore looked up based on the request to write." Appellant respectfully disagrees with the Examiner's argument and respectfully asserts that WFP merely teaches that the "Windows File Protection feature is implemented when it is notified that a file in a protected folder is modified" and that "[o]nce the notification is received, the Windows File Protection feature determines which file was changed" (emphasis added). Further, WFP teaches that "Windows File Protection feature looks up the file signature in a catalog to determine if the new file is the correct Microsoft version" and "[i]f it is not, the file is replaced from the Dllcache folder" (emphasis added). However, WFP's disclosure of being notified when a file is modified

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